

190.047 Transfer of motor vehicle sales franchise -- Proposal to establish additional dealership or to relocate existing dealership.

- (1) Unless a franchise specifically states to the contrary, no franchise or any interest in a franchise may be sold, transferred, or assigned without the approval of the manufacturer or distributor.
- (2) A dealer desiring to sell, transfer, or assign all or any portion of his franchise shall submit a written proposal of the sale, transfer, or assignment to the manufacturer or distributor, and approval of the proposal shall not be arbitrarily or unreasonably withheld.
- (3) The refusal of the manufacturer or the distributor to approve a proposed sale, transfer, or assignment shall be subject to review by the licensor, if a written application for review is filed with the licensor, with notice to the manufacturer or distributor, within thirty (30) days of the date of the refusal. The refusal shall not be final until the licensor, after a hearing has been held in accordance with the provisions of KRS Chapter 13B, has determined that the approval was not arbitrarily or unreasonably withheld.
- (4) The burden of proof shall be on the dealer to show that the approval of the sale, transfer, or assignment of any interest in the franchise was arbitrarily or unreasonably withheld. Factors to be considered in determining whether the manufacturer or distributor acted arbitrarily or unreasonably shall include whether the basic financial and facility requirements of the franchise will be met by the proposed transfer, sale, or assignment and that the proposed purchaser, transferee, or assignee is capable of operating, managing, and supervising the operation of the business in question.
- (5) Failure of the manufacturer or distributor to abide by the final order of the licensor or to continue the franchise in effect pending the final determination of the issue by the licensor shall be cause for the licensor to refuse to issue a subsequent license in the same county or franchise area to an applicant who will be selling the same motor vehicles as the former dealer for the same manufacturer or distributor.
- (6) If a manufacturer, distributor, factory branch, or factory representative seeks to:
 - (a) Enter into a franchise establishing an additional new motor vehicle dealership facility;
 - (b) Establish an additional new motor vehicle dealership facility under an existing franchise; or
 - (c) Relocate an existing new motor vehicle dealership facility, within or into a relevant market area where the same line make is then represented,the manufacturer, distributor, factory branch, or factory representative shall, in writing, first notify the licensor, and each new motor vehicle dealer in the line make in the relevant market area, of the intention to establish an additional new motor vehicle dealership facility, or to establish an additional new motor vehicle dealership facility under an existing franchise, or to relocate an existing new motor vehicle dealership facility within or into that market area. The relevant market area shall be a radius of ten (10) miles around an existing new motor vehicle dealership

facility. Within fifteen (15) days of receiving the notice, or within fifteen (15) days after the end of any appeal procedure provided by the manufacturer, distributor, factory branch, or factory representative, any new motor vehicle dealership may file with the licensor a protest to the establishment or relocation of the new motor vehicle dealership facility. When a protest is filed, the licensor shall inform the manufacturer, distributor, factory branch, or factory representative that a timely protest has been filed and that the manufacturer, distributor, factory branch, or factory representative shall not establish or relocate the proposed new motor vehicle dealership facility until the licensor has held a hearing in accordance with KRS Chapter 13B, if the licensor has determined that there is good cause for permitting the new motor vehicle dealership facility. For the purposes of this section, the reopening in a relevant market area of a new motor vehicle dealership that has not been in operation for two (2) years or more shall be deemed the establishment of an additional new motor vehicle dealership facility.

- (7) In determining whether good cause has been established for entering into an additional franchise for the same line make, or establishing an additional new motor vehicle dealership facility under an existing franchise, or relocating an existing new motor vehicle dealership facility within or into a relevant market area where the same line make is then represented, the licensor shall take into consideration the existing circumstances, including, but not limited to:
 - (a) Permanency of the investment;
 - (b) Whether the new motor vehicle dealer of the same line make in that relevant market area is providing adequate competition and convenient consumer care for the motor vehicles of the line make in the market area, which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel; and
 - (c) Growth, or decline in population and new car registrations in the relevant market areas.

In the case of the establishment of an additional new motor vehicle dealership facility under an existing franchise, good cause shall not be found if the additional facility fails to offer a range of service, including, but not limited to sales, service, parts, and financing.

- (8) Any parties to a hearing by the licensor concerning the establishing or relocating of a new motor vehicle dealership shall have a right of judicial review of the final order in accordance with KRS Chapter 13B.
- (9) The provisions of this section shall apply to the personal representative, executor, or administrator of the estate of an individual who had an interest in a franchise, or to the guardian or conservator of an individual who has been declared mentally disabled and who has that interest for one (1) year following appointment.
- (10) The provisions of this section do not apply to:
 - (a) The relocation of an existing dealership within that dealer's area of responsibility contained in its franchise agreement, provided the relocation is

not within five (5) miles of a new motor vehicle dealer of the same line make;
or

- (b) The relocation of an existing new motor vehicle dealership facility to a site that is further away from an existing dealership of the same line make.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 111, sec. 6, effective July 15, 1996; and ch. 318, sec. 77, effective July 15, 1996. -- Amended 1984 Ky. Acts ch. 357, sec. 6, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 141, sec. 64, effective July 1, 1982; and ch. 373, sec. 8, effective July 15, 1982. -- Amended 1974 Ky. Acts ch. 74, Art. IV, sec. 20(2). -- Created 1972 Ky. Acts ch. 75, sec. 3.

Legislative Research Commission Note (7/15/96). This section was amended by 1996 Ky. Acts chs. 111 and 318 which do not appear to be in conflict and have been codified together.

Note: 1980 Ky. Acts ch. 396, sec. 69 would have amended this section effective July 1, 1982. However, 1980 Ky. Acts ch. 396 was repealed by 1982 Ky. Acts ch. 141, sec. 146, also effective July 1, 1982.